

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES PARSLEY,	:	
Petitioner,	:	<u>ORDER ADOPTING REPORT</u>
v.	:	<u>AND RECOMMENDATION</u>
	:	
J. LAMANNA,	:	19 CV 4756 (VB)
Respondent.	:	
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Before the Court is Magistrate Judge Paul E. Davison’s Report and Recommendation (the “R&R”) dated May 2, 2023, regarding Charles Parsley’s pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. #35). For the reasons set forth in the R&R, Judge Davison recommended proceeding on the assumption that petitioner would prefer to delete the unexhausted claim in the petition (the first claim for relief), thereby viewing the petition as if petitioner had deleted his first claim for relief, and then assessing the two remaining claims for relief. In that light, Judge Davison recommended that the Court dismiss the petition in its entirety.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail, see Fed. R. Civ. P. 6(d).

When a party submits a timely objection to a report and recommendation, the district court reviews the parts of the report and recommendation to which the party objected under a de

novo standard of review. 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record. See Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

On May 2, 2023, a copy of the R&R was mailed to petitioner at his address on the docket. See R&R at 20. Neither party has objected to Judge Davison's thorough and well-reasoned R&R. The Court has carefully reviewed the R&R, the petition, and the parties' various submissions, and finds no error, clear or otherwise.

Accordingly, the Court adopts the R&R as the opinion of the Court, and the petition for a writ of habeas corpus is DISMISSED.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk is instructed to enter Judgment accordingly and close this case.

Chambers will mail a copy of this Order to petitioner at the address on the docket.

Dated: August 25, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge